

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

REGULATORY AUTH.

IN RE: BELL SOUTH)
TELECOMMUNICATIONS, INC.'S)
ENTRY INTO LONG DISTANCE)
(INTERLATA) SERVICE IN)
TENNESSEE PURSUANT TO SECTION)
271 OF THE TELECOMMUNICATIONS)
ACT OF 1996)

JUL 19 PM 3 05

DOCKET NO. 97-00309

EXECUTIVE SECRETARY

**COMMENTS OF XO TENNESSEE, INC.
REGARDING THE FCC'S MARCH 23, 2001 PUBLIC NOTICE**

At the request of the Hearing Officer, XO Tennessee, Inc. ("XO") submits the following comments concerning the FCC's recent pronouncement¹ describing how the federal agency intends to review Section 271 applications submitted by BOCs such as Bellsouth Telecommunications, Inc. ("BellSouth"). As the FCC explained, this latest "Public Notice" is intended to serve as a "single, current reference for the procedural requirements and policies relating to the Commission's processing of section 271 applications."

XO submits that the TRA cannot fulfill its "critical statutory role"² in this 271 review process unless the agency adopts procedural and substantive requirements that are consistent with the FCC's guidelines described in the Public Notice..

First, the TRA should recognize the significance of this state proceeding in relation to the overall application process. Because of the limited time and resources available to the FCC, the federal agency has stated it will rely heavily on the findings of state commissions, especially in

¹ Updated Filing Requirement of Bell Operating Company Applications Under Section 271 of the Communications Act, DA 01-734 (March 23, 2001) hereafter referred to as the "Public Notice."

² Public Notice, at 8.

those cases where the state has conducted a “rigorous investigation” of the Bell carrier’s application and provided the FCC with a “detailed record” to support the state’s findings and conclusions. The Public Notice explains (at 8):

State commissions have a critical statutory role in the section 271 authorization process. We encourage state commissions to become actively involved in validating and reconciling data, overseeing third-party testing of operations support systems, developing clearly-defined performance measures and standards, and implementing performance assurance measures that strongly encourage post-entry compliance. Indeed, given our 90-day statutory deadline, this Commission looks to state commissions to resolve factual disputes wherever possible. As indicated in prior section 271 orders, this Commission will accord more weight to state commission evaluations where the state has conducted a rigorous investigation of the BOC’s compliance with the statutory requirements through an open, collaborative state process that allows full participation by all interested parties, and has supported its evaluation with a detailed record.

To help the state commissions create the kind of “detailed record” that the federal agency needs, the Public notice “encourage[s] the BOC and interested third parties to ensure that factual disputes are brought before and addressed by the relevant state commissions prior to submitting [the BOC] application with this Commission.” Public Notice, at 5, emphasis added.

These factual findings, moreover, must be state specific. The FCC wrote that the BOC applicant “must make state-specific evidentiary showings and separately identify each state’s relevant performance data.” Public Notice, at 5. In other words, performance data gathered from one state would not be “relevant” to an application from another state.

More than once, the Public notice emphasizes the importance of state-specific performance data based on “actual commercial usage” evaluated according to the performance measures which state regulators have found necessary and appropriate to promote competition in that state.. After requiring each BOC to make a “state-specific evidentiary showing” and

identify “each state’s relevant performance data,” the FCC repeated the importance of state-specific performance data in evaluating a 271 application (*Id.*, at 5-6.):

Simply put, we would find it most persuasive if, in its initial application, a section 271 applicant relying on performance data:

1. provided sufficient performance data to supports its contention that the statutory requirements are satisfied;
2. identified the facial disparities between the applicant’s performance for itself and its performance for competitors;
3. explained why those facial disparities are anomalous, caused by forces beyond the applicant’s control (*e.g.*, competitive LEC errors) or have no meaningful adverse impact on a competitive LEC’s ability to obtain and serve customers; *and*
4. provided the underlying data, analysis, and methodologies necessary to enable the explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

We believe these steps should be readily apparent from our previous orders, but we provide them in the interest of removing doubt about what we would find most persuasive to show that it is more likely than not that an applicant has satisfied the requirements of section 271.

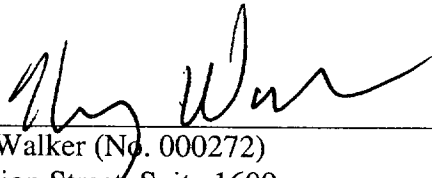
Finally, the FCC “stress[ed] again that, as originally filed, a section 271 application should include all of the factual evidence on which the applicant asks the Commission to rely in making its findings thereon.” Public Notice, at 5. This so-called complete-as-filed requirement is necessary to avoid the pitfalls of trying to hit a moving target, a problem which plagued the TRA during its year-long investigation of BellSouth’s earlier 271 application. Because of those problems, the TRA itself adopted the complete-as-filed requirement in an order issued June 1, 1999. The agency said that when BellSouth chooses to refile its 271 applications, the carrier should submit to the TRA “the filing that it will likely rely on before the FCC.” Order, at 16. It is self-evident that unless BellSouth’s initial filing with the TRA includes “all of the factual evidence” which BellSouth intends to submit to the FCC, the TRA cannot be expected to

“resolve factual disputes” in the application, much less conduct a “rigorous investigation” of BellSouth’s compliance.

“We expect that state commissions will make written factual findings and reach reasoned legal conclusions,” concerning a BOC’s application, the FCC has stated. The only way for the TRA to accomplish that goal and to participate meaningfully in the federal review process is for the Authority to be as vigorous as the FCC in requiring full compliance with the federal procedures and guidelines described in the Public Notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2001, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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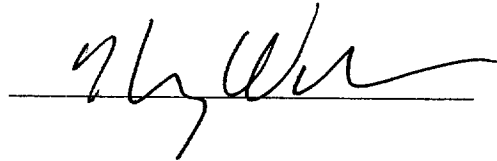
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A handwritten signature in black ink, appearing to read "Steve Brown", is written over a horizontal line.